ECOPY

No. 860

In the Supreme Court of the United States

OCTOBER TERM, 1958

THE SENECA NATION OF INDIANS, PETITIONER

v.

WILBER M. BRUCKER, SECRETARY OF THE ARMY, AND EMERSON C. ITSCHNER, MAJOR GENERAL, UNITED STATES ARMY CORPS OF ENGINEERS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

MEMORANDUM FOR RESPONDENTS

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
ROGER P. MARQUIS,
Attorneys,
Department of Justice, Washington 25, D.C.

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hese comments are addressed to supplementary lative materials which petitioner has lodged with Court.

titioner has filed copies of the Hearings of the e Subcommittee on Appropriations on the Public ks Appropriations for 1960, 86th Cong., 1st Sess. point out that early in the hearings the alterna- to the Kinzua Dam were noted (Part 1, pp. 35, Proponents of the project testified at length g prompt action (*id.*, Part 3, pp. 593–642). The ns' opposition was likewise fully expressed to subcommittee (*id.*, Part 4, pp. 1830–1877). titioner has [redacted] the Committee Report, H.

(1)

Rep. No. 424, 86th Cong., 1st Sess. The Court will note that the Committee (p. 17) recommends allocation of the $1,400,000 appropriated for the project to other purposes. The reasons given are twofold: (1) that the Committee has ordered an independent investigation of alternative proposals; (2) "the further fact that litigation on the matter of the Kinzua Dam is still pending in the Supreme Court."

The materials which petitioner has filed re-emphasize the fact that Congress, which admittedly has power to act in the premises, is proceeding with complete knowledge of the Indians' objections. If additional funds for the project are ultimately appropriated, there will be a reaffirmation of Congress's abiding intention to authorize the taking of petitioner's lands. If Congress should reverse itself and abandon the project, the case would, of course, become moot. The present Congressional proceedings do not, we submit, lend any support to the contention that Congress has failed to authorize a taking of the lands in question.

We believe, accordingly, that the petition should be considered in ordinary course and, for the reasons previously advanced, that it should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.
PERRY W. MORTON,
Assistant Attorney General.
ROGER P. MARQUIS,
Attorney.

JUNE 1959.

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